Milwaukee Brush Manufacturing Company *and* **United Steelworkers of America, AFL-CIO-CLC.** Case 30-CA-6413

August 21, 1981

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND ZIMMERMAN

Upon a charge filed on April 2, 1981, by United Steelworkers of America, AFL-CIO-CLC, herein called the Union, and duly served on Milwaukee Brush Manufacturing Company, herein called Respondent, the General Counsel of the National Labor Relations Board, by the Acting Regional Director for Region 30, issued a complaint on April 9, 1981, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges in substance that on March 18, 1981, following a Board election in Case 30-RC-3704, the Union was duly certified as the exclusive collective-bargaining representative of Respondent's employees in the unit found appropriate;[1] and that, commencing on or about March 30, 1981, and at all times thereafter, Respondent has refused, and continues to date to refuse, to bargain collectively with the Union as the exclusive bargaining representative, although the Union has requested and is requesting it to do so, and commencing on or about March 30, 1981, and at all times thereafter, Respondent has refused, and continues to date to refuse, to bargain collectively with the Union by refusing to provide information requested by the Union.[2] Thereafter, Respondent filed its answer to the complaint admitting in part, and denying in part, the allegations in the complaint.

On April 27, 1981, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment, with exhibits attached. Subsequently, on May 1, 1981, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent thereafter filed a response to the Notice To Show Cause.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

Respondent, in its answer to the complaint, admits its refusal to recognize and bargain with the Union. However, in its answer to the complaint and response to the Notice To Show Cause, it challenges the Union's certification, based on its objections to the election in the underlying representation proceeding.

Review of the record herein, including the representation proceeding in Case 30-RC-3704, reveals that an election conducted pursuant to a Stipulation for Certification Upon Consent Election on March 14, 1980, resulted in a vote of 36 for, and 31 against, the Union, with 3 challenged ballots, a number insufficient to affect the results of the election. Thereafter, Respondent filed timely objections to the election alleging, in substance, that the Union (1) threatened eligible voters with physical violence, damage to property, and loss of employment; (2) engaged in surveillance of eligible voters; (3) made substantial and material misrepresentations; and (4) engaged in last-minute electioneering on company premises.

After the investigation, the Acting Regional Director ordered that a hearing be held on the issues raised by Respondent's objections. Following a hearing, the duly designated Hearing Officer issued his report on May 6, 1980, in which he recommended that Respondent's objections be overruled in their entirety and that a certification of representative be issued. Thereafter, Respondent filed timely exceptions to the Hearing Officer's report. On August 27, 1980, the Board issued an unpublished order remanding the proceeding to the Hear-

[1] Official notice is taken of the record in the representation proceeding, Case 30-RC-3704, as the term "record" is defined in Secs. 102.68 and 102.69(g) of the Board's Rules and Regulations, Series 8, as amended. See *LTV Electrosystems, Inc.*, 166 NLRB 938 (1967), enfd. 388 F.2d 683 (4th Cir. 1968); *Golden Age Beverage Co.*, 167 NLRB 151 (1967), enfd. 415 F.2d 26 (5th Cir. 1969); *Intertype Co. v. Penello*, 269 F.Supp. 573 (D.C.Va. 1967); *Follett Corp.*, 164 NLRB 378 (1967), enfd. 397 F.2d 91 (7th Cir. 1968); Sec. 9(d) of the NLRA, as amended.

[2] The complaint alleges, and Respondent's answer admits, that by letter dated March 23, 1981, the Union requested Respondent to recognize it as the exclusive representative of the unit employees and to bargain collectively with it, and that Respondent has failed and refused to recognize and bargain with the Union. The complaint does not refer specifically to the Union's request for information and Respondent's refusal to furnish such information. However, in its March 23 letter, a copy of which has been submitted by the General Counsel and the validity of which is not disputed, the Union requested Respondent to furnish certain information relating to the unit employees and, therefore, the complaint allegations are sufficient to encompass the Union's request for information. Furthermore, we note that in his Motion for Summary Judgment the General Counsel refers specifically to the Union's request for information in its March 23 letter and sets forth the information sought.

ing Officer. Pursuant thereto, on September 4, 1980, the Hearing Officer issued his supplemental report in which he recommended that Respondent's objections be overruled in their entirety and a certification of representative be issued. Thereafter, Respondent filed timely exceptions to the supplemental report. On March 18, 1981, the Board, having considered the Hearing Officer's report and supplemental report, Respondent's exceptions thereto, and the entire record, adopted the findings and recommendations of the Hearing Officer and certified the Union as the exclusive bargaining representative of the employees in the unit stipulated to be appropriate. It thus appears that Respondent is attempting in this proceeding to relitigate issues fully litigated and finally determined in the representation proceeding.

It is well settled that in the absence of newly discovered or previously unavailable evidence or special circumstances a respondent in a proceeding alleging a violation of Section 8(a)(5) is not entitled to relitigate issues which were or could have been litigated in a prior representation proceeding.[3]

All issues raised by Respondent in this proceeding were or could have been litigated in the prior representation proceeding, and Respondent does not offer to adduce at a hearing any newly discovered or previously unavailable evidence, nor does it allege that any special circumstances exist herein which would require the Board to reexamine the decision made in the representation proceeding. We therefore find that Respondent has not raised any issue which is properly litigable in this unfair labor practice proceeding. Accordingly, we find that Respondent at all material times herein has refused to recognize and bargain with the Union, and that it thereby has violated Section 8(a)(5) and (1) of the Act.

By letter dated March 23, 1981, the Union requested that Respondent furnish it information concerning the name, address, classification, rate of pay, sex, date of birth, and date of hire of each employee, and whether the employee has family or single insurance coverage; copies of the present pension plan 5500 reports for the last 3 years; copies of all insurance plans covering employees; copies of all benefits and privileges at present enjoyed by employees; and copies of all rules and policies in effect for employees. We have found that the Union's certification is proper, and it is well established that such information is presumptively relevant for purposes of collective bargaining and must be furnished upon request.[4] We find that no material issues of fact exist with regard to Respondent's refusal to honor the Union's request in its letter of March 23, 1981, and that its refusal to do so violated Section 8(a)(5) and (1) of the Act. Accordingly, we grant the Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Respondent, a Wisconsin corporation, with its principal place of business in Menomonee Falls, Wisconsin, is engaged in the manufacture of brushes. During the calendar year ending December 31, 1980, a representative period, Respondent, in the course and conduct of its business operations, purchased and received goods valued in excess of $50,000 directly from suppliers located outside the State of Wisconsin.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATION INVOLVED

United Steelworkers of America, AFL-CIO-CLC, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *The Representation Proceeding*

1. The unit

The following employees of Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

> All production and maintenance employees, including shipping and receiving employees, employed by the Employer at its W142 N9251 Fountain Boulevard, Menomonee Falls, Wisconsin, location; excluding office clerical employees, executives, and administrative personnel, managerial employees, professional employees, guards and supervisors as defined in the National Labor Relations Act, as amended.

2. The certification

On March 14, 1980, a majority of the employees of Respondent in said unit, in a secret-ballot election conducted under the supervision of the Re-

[3] See *Pittsburgh Plate Glass Co.* v. *N.L.R.B.*, 313 U.S. 146, 162 (1941); Rules and Regulations of the Board, Secs. 102.67(f) and 102.69(c).

[4] See *Verona Dyestuff Division Mobay Chemical Corporation*, 233 NLRB 109 (1977), and cases cited therein at fn. 5

gional Director for Region 30, designated the Union as their representative for the purpose of collective bargaining with Respondent.

The Union was certified as the collective-bargaining representative of the employees in said unit on March 18, 1981, and the Union continues to be such exclusive representative within the meaning of Section 9(a) of the Act.

B. *The Request To Bargain and Respondent's Refusal*

Commencing on or about March 23, 1981, and at all times thereafter, the Union has requested Respondent to bargain collectively with it as the exclusive collective-bargaining representative of all the employees in the above-described unit. Commencing on or about March 30, 1981, and continuing at all times thereafter to date, Respondent has refused, and continues to refuse, to recognize and bargain with the Union as the exclusive representative for collective bargaining of all employees in said unit.

Accordingly, we find that Respondent has, since March 30, 1981, and at all times thereafter, refused to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit, and that, by such refusal, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

C. *The Request for Information and Respondent's Refusal To Furnish It*

Commencing on or about March 23, 1981, and at all times thereafter, the Union has requested Respondent to provide it with information concerning the unit employees' classifications, rates of pay, benefits, work rules, and related information. Commencing on or about March 30, 1981, Respondent has refused, and continues to refuse, to provide the Union with the requested information. Accordingly, we find that Respondent has refused to furnish the Union with information relating to the employment conditions and wages of the employees in the appropriate unit, and that, by such refusal, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and(1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, and, upon request, bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit and, if an understanding is reached, embody such understanding in a signed agreement. We shall also order that Respondent, upon request, furnish the Union with the information it requested by letter dated March 23, 1981.

In order to insure that the employees in the appropriate unit will be accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of certification as beginning on the date Respondent commences to bargain in good faith with the Union as the recognized bargaining representative in the appropriate unit. See *Mar-Jac Poultry Company, Inc.*, 136 NLRB 785 (1962); *Commerce Company d/b/a Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817; *Burnett Construction Company*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

CONCLUSIONS OF LAW

1. Milwaukee Brush Manufacturing Company is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. United Steelworkers of America, AFL-CIO-CLC, is a labor organization within the meaning of Section 2(5) of the Act.

3. All production and maintenance employees, including shipping and receiving employees, employed by Respondent at its W142 N9251 Fountain Boulevard, Menomonee Falls, Wisconsin, location; excluding office clerical employees, executives, and administrative personnel, managerial employees, professional employees, guards and supervisors as defined in the National Labor Relations Act, as amended, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. Since March 18, 1981, the above-named labor organization has been and now is the certified and exclusive representative of all employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing on or about March 30, 1981, and at all times thereafter, to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all the employees of Respondent in the appropriate unit, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By refusing on or about March 30, 1981, and at all times thereafter, to furnish the Union with information concerning the unit employees' classifications, rates of pay, benefits, work rules, and related information as requested by the Union in its letter of March 23, 1981, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a)(5) of the Act.

7. By the aforsaid refusal to bargain and refusal to furnish information, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed them in Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

8. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Milwaukee Brush Manufacturing Company, Menomonee Falls, Wisconsin, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with United Steelworkers of America, AFL-CIO-CLC, as the exclusive bargaining representative of its employees in the following appropriate unit:

> All production and maintenance employees, including shipping and receiving employees, employed by Respondent at its W142 N9251 Fountain Boulevard, Menomonee Falls, Wisconsin, location, excluding office clerical employees, executives, and administrative personnel, managerial employees, professional employees, guards and supervisors as defined in the National Labor Relations Act, as amended.

(b) Refusing to bargain collectively with the above-named labor organization by refusing to furnish said labor organization with the information requested in its letter of March 23, 1981, concerning the unit employees' classifications, rates of pay, benefits, work rules, and related information.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Upon request, furnish the above-named labor organization with the information requested in its letter of March 23, 1981, concerning the unit employees' classifications, rates of pay, benefits, work rules, and related information.

(c) Post at its W142 N9251 Fountain Boulevard, Menomonee Falls, Wisconsin, facility, copies of the attached notice marked "Appendix."[5] Copies of said notice, on forms provided by the Regional Director for Region 30, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 30, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

[5] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with United Steelworkers of America, AFL-CIO-CLC, as the exclusive representative of

the employees in the bargaining unit described below.

WE WILL NOT refuse to bargain collectively with the above-named Union by refusing to furnish said Union with the information requested in its letter of March 23, 1981, concerning unit employees' classifications, rates of pay, benefits, work rules, and related information.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, bargain with the above-named Union, as the exclusive representative of all employees in the bargaining unit described below, with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All production and maintenance employees, including shipping and receiving employees, employed by Employer at its W142 N9251 Fountain Boulevard, Menomonee Falls, Wisconsin, location; excluding office clerical employees, executives, and administrative personnel, managerial employees, professional employees, guards and supervisors as defined in the National Labor Relations Act, as amended.

WE WILL, upon request, furnish the above-named labor organization with the information requested in its letter of March 23, 1981, concerning the unit employees' classifications, rates of pay, benefits, work rules, and related information.

MILWAUKEE BRUSH MANUFACTURING COMPANY